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Pardons and Paroles - Board of
Pardons and Paroles - Civil
Disabilities - Prisons and
Prisoners

The Board of Pardons and Paroles
has the authority to grant a
pardon after a prisoner has been
discharged from custody.

The Board of Pardons and Paroles
may restore civil and political
rights after the granting of a
pardon.

Dear Mr. Williams:

The Attorney General is in receipt of your request for an
opinion wherein you pose the following two questions:

1. Does the Board have jurisdiction, power, and
authority to grant a pardon after a prisoner has
completed service of his sentence and has been
discharged from custody (Section 15-22-36(c),
Code of Alabama 1975, appears to provide such
authority).

2. If the answer to question number one is affirmative, does the Board also have the alternative jurisdiction, power, and authority to grant a restoration of civil and political rights, without granting a pardon, after a prisoner has completed service of his sentence and has been discharged from custody.

In order to answer your first question it is necessary that we journey back to the beginning of the State of Alabama and the State's first constitution in 1819. The Constitution of Alabama of 1819, Article 4, Section 11, provided that the Governor had the authority to grant reprieves, pardons and to remit fines and forfeitures. In the Constitution of Alabama of 1861, Article 4, Section 11, the same authority was vested in the Governor as in the 1819 Constitution. In the Constitution of 1865, Article 5, Section 13 provided that the Governor had the authority to grant reprieves, pardons and to remit fines and forfeitures. In the Constitution of 1868, Article 5, Section 11, the Governor was given the authority to grant reprieves, commutations, pardons, but a specific restriction on pardons is found in that a pardon did not relieve the subject of the pardon from civil and political disabilities. The Constitution of Alabama of 1875 in Article 5, Section 12 provided that the Governor had the authority to remit fines and forfeitures and to grant reprieves, pardons and commutations. However, the Constitution of 1875 in Section 12 contains a list of crimes which even though pardoned did not relieve the person of civil and political disabilities unless expressly so stated in the pardon. The Constitution of Alabama of 1901 in Section 124 provides that the Governor shall have the power to remit fines and forfeitures, to grant reprieves, paroles, commutations of sentences, and pardons except in the case of impeachment. Section 124 specifically stated that:

Pardons in cases of felony and other offenses involving moral turpitude shall not relieve from civil and political disabilities, unless approved by the Board of Pardons and specifically expressed in the pardon.

The Code of Alabama of 1907 in §§ 1593 through 1597 created a Board of Pardons composed of the Attorney General, the Secretary of State and the State auditor to make recommendations to the Governor concerning pardons.

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Section 124 of the Constitution of Alabama of 1901 was amended by Amendment No. 38 in 1939. Amendment 38 provides:

The Governor shall have the power to grant reprieves and commutations to persons under sentence of death. The legislature shall have the power to provide for and to regulate the administration of pardons, paroles, remission of fines and forfeitures, and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. No pardon shall relieve from civil and political disabilities unless specifically expressed in the pardon.

Section 17-3-5, Code of Alabama 1975, provides:

Any person who is disqualified from voting by reason of conviction of any of the offenses mentioned in 17-3-3, except treason and impeachment, whether the conviction was in a state or federal court, and who has been pardoned, may be restored to his or her citizenship with right to vote by the State Board of Pardons and Paroles when specifically expressed in the pardon.

Section 15-22-36, Code of Alabama 1975, provides:

(a) In all cases except treason and impeachment and in cases in which sentence of death is imposed and not commuted, as is provided by law, the Board of Pardons and Parole shall have the authority and power, after conviction and not otherwise to grant pardons and paroles...

And in Subsection (c):

No pardon shall relieve one from civil and political disabilities unless specifically expressed in the pardon; and no pardon shall be granted unless the prisoner has successfully completed at least three years of permanent parole or until the expiration

of the sentence if his sentence was for less than three years, except upon the unanimous affirmative vote of the Board following receipt and filing of clear proof of his innocence of the crime for which he was convicted in the written approval of the judge...

It is therefore the opinion of the Attorney General that the Alabama Board of Pardons and Paroles has the authority to grant a pardon in three distinct situations. Those situations are:

1. When a prisoner has successfully completed at least three years of permanent parole.
2. When a parolee's sentence has expired if his sentence is less than three years.
3. By a unanimous vote of the Board after receipt of clear proof of the innocence of the crime for which the person was convicted and with other restrictions as expressed in Subsection (c) of § 15-22-36.

Therefore the answer to question 1 is that the Board has the jurisdiction, power, and authority to grant a pardon after a prisoner has completed service of his sentence and has been discharged from custody.

The answer to question 2 is more difficult in light of the historical evidence presented above. It is clear that since at least 1875 when the Constitution of Alabama of 1875 was passed an intent was shown by the framers of the Alabama Constitution, that in at least some cases involving particular crimes, a pardon should not automatically relieve an individual of the civil and political disabilities that attach upon conviction of certain crimes. This list of crimes for which a pardon did not automatically restore civil and political rights has grown from a specific list as found in the 1875 Constitution to a more all inclusive list of crimes involving moral turpitude as found in the Constitution of 1901. The distinction between a pardon and a restoration of civil and political rights seems to have been blurred by the passage of time. Yet it is the opinion of the Attorney General that before a person may be eligible for a restoration of civil and political rights a pardon must be granted (see § 17-3-5,

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§ 15-22-36(c), Johnson v. State, 421 So.2d 1306, Opinion of the Attorney General to Edward Mitchell, May 26, 1944). Therefore it is the opinion of the Attorney General that the Alabama Board of Pardons and Paroles has authority to grant two types of pardons. Those are:

1. A full pardon with a restoration of civil and political rights expressly stated in the pardon. This type of pardon may be issued only after compliance with § 15-22-36, Code of Alabama 1975.
2. A pardon without a specific restoration of civil and political rights. This type of pardon may be granted only after compliance with § 15-22-36, Code of Alabama 1975.

The remaining issue to be decided is how after receiving a pardon, a person may be also relieved of the civil and political disabilities that come with the conviction of a crime involving moral turpitude. Some states allow for automatic restoration upon discharge from parole or probation. U.S. v. Kozerski, 518 F.Supp. 1082. It is the opinion of the Attorney General that after receipt of a pardon without a specific expression of relief of civil and political disabilities, a person who has been convicted of a crime carrying with it civil and political disabilities must again apply to the Board for a restoration of civil and political rights. This may be viewed as an addendum to the previously received pardon or the Alabama Board of Pardons and Paroles may, after receiving a request for a restoration of civil and political rights from a person who has been previously pardoned, issue a new pardon with a specific expression of relief of civil and political disabilities.

It would appear that the system that the Board is currently using allows for a restoration of civil and political rights separate from and prior to a pardon. It is the opinion of the Attorney General that a restoration of civil and political rights may be given only after receipt of a pardon.

We have conducted extensive research into the questions posed by you and we hope we have fully and completely answered your question. If we may provide you with further information

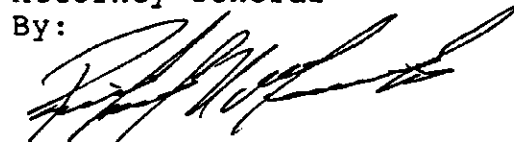
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concerning this matter, please feel free to call upon us at any time.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:

A handwritten signature in black ink, appearing to read "R. N. Meadows", written over the word "By:".

RICHARD N. MEADOWS
Assistant Attorney General

CAG/RNM/pm